

REMARKS

Applicants respectfully request reconsideration of the present U.S. Patent application. Claims 1, 2, 4-7, 9, 10, 13, 25, 27-29 and 31-34 stand rejected under 35 U.S.C. § 103. Claims 1 and 13 have been amended. No claims have been canceled or added. Therefore, claims 1, 2, 4-7, 9, 10, 13, 25, 27-29 and 31-34 remain pending.

Claim Rejections - 35 U.S.C. § 103Rejections of Claims 1, 2, 4-7, 9, 10, 13, 25, 27-29 and 31-34 based on *Misra* in view of *Gradient* and *Bains*

Claims 1, 2, 4-7, 9, 10, 13, 25, 27-29 and 31-34 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,189,146 issued to Misra et al. (*Misra*) in view of Gradient, "Gradient Introduces End User Software License Creation and Delivery Tool For Its iFOR/LS Licensing Technology" (*Gradient*) and U.S. Patent No. 6,189,146 issued to Bains et al. (*Bains*). For at least the reasons set forth below, Applicants submit that claims 1, 2, 4-7, 9, 10, 13, 25, 27-29 and 31-34 are not rendered obvious by *Misra* in view of *Gradient* and *Bains*.

Amended claim 1 recites the following:

generating, on a first computer, a first license for software installed on the first computer, wherein the first license is generated by the first computer in response to the software being installed;

obtaining, by the first computer, from a second computer a second license for the installed software, wherein the second license is generated by the second computer;
determining, by the first computer, whether the second license is authentic; and
replacing, if the second license is authentic, the first license with the second license.

Amended claim 13 is directed to a computer-readable medium and recites similar limitations. A proper rejection under 35 U.S.C. § 103 requires that a prior art reference,

or references when combined, must teach or suggest all of the claim limitations of the rejected claim. See MPEP § 2143.

Misra discloses a software licensing system for software licenses between a licensee and a licensor. See Abstract; col. 1, lines 11-14 and lines 46-50; col. 1, line 62 – col. 2, line 5. A license generator creates a license pack containing one or more of the software licenses. See col. 2, lines 32-36. The license generator sends the license pack to a license server, and the license server distributes the license pack to individual clients. See col. 2, lines 52-54; col. 8, lines 35-38; col. 9, lines 29-36. An intermediate server acts as a go-between for a client and a license server. See col. 11, lines 37-38.

The intermediate server determines whether the client has a valid license. See col. 14, lines 2-5. If the client has an invalid license, the client is disconnected from the intermediate server. See col. 14, lines 10-11. If the client has a valid license, the client may connect with and use the resources of the intermediate server. See col. 14, lines 8-9. If the client does not offer a license or offers an expired license, the intermediate server requests a new license for the client from the license server. See col. 14, lines 11-13.

If a new license is requested from the license server, the license server determines whether the client is authentic, and grants a new license if the client is authentic. See col. 15, lines 9-28. The license server digitally signs the license and encrypts the license using the client's public key. See col. 15, lines 37-39. The encrypted license is forwarded to the intermediate server, which passes the license to the client. See col. 15, lines 40-42. Encrypting the license prevents the intermediate server from maliciously using or modifying the license, and removes the risk of a rogue server impersonating the intermediate server. See col. 15, lines 44-46. Consequently, the client need not worry

about a corrupted license, meaning that the client need only decrypt the license using the client's private key. See col. 15, lines 42-44 and 47-49. Therefore, *Misra* does not disclose obtaining, by a first computer, from a second computer a second license for software installed on the first computer, wherein the second license is generated by the second computer, and determining, by the first computer, whether the second license is authentic.

In addition, Applicants agree with Examiner that *Misra* fails to disclose that a first computer generates the first license. See Office Action, page 4, lines 12-14. However, Examiner contends that *Gradient* discloses the ability to allow an end user to create a license and store the license on the end user's computer, and that it would have been obvious to one of ordinary skill in the art to modify *Misra* to include *Gradient*. See Office Action, page 4, lines 14-27. Examiner further contends that *Bains* discloses a distributed licensing system in which a node's policy server daemon grants a temporary license to run a software product on the node, and that it would have been obvious to one of ordinary skill in the art to modify *Misra* to include *Bains*. See Office Action, page 5, lines 1-8.

Gradient discloses enabling end users to create software licenses on their own system without outside intervention. See Page 1, second paragraph. An end user at a personal computer can create licenses that are installed within licensing servers, within a department or within the personal computer. See Page 1, fifth paragraph. Specifically, the end user chooses software for installation, from the screen of a software distribution utility. See Page 1, eighth paragraph. The software distribution utility communicates with a license delivery tool that obtains authorization and server information. See Page 1,

eighth paragraph. The license delivery tool creates a valid license and delivers the license for installation, and the transaction is recorded for payment. See Page 1, eighth paragraph. Therefore, *Gradient* does not disclose generating, on a first computer, a first license for software installed on the first computer, wherein the first license is generated by the first computer in response to the software being installed. Thus, *Gradient* fails to cure the deficiencies of *Misra*.

Bains discloses a license administration system, wherein each computer node of a network runs a variety of software products that include a "get_license" call to a local policy server daemon operating at the computer node. See col. 5, lines 28-34. The daemon determines whether a license is available to run the software product in question, where the term "license" means "the availability of permission to run the software product," and does not mean a written document between a licensor and a licensee. See col. 5, lines 34-39. The daemon communicates with a license server, which indicates whether a license may be granted, and if so, the daemon reports the license to the software product. See col. 5, lines 44-55.

If the daemon is unable to communicate with the license server, the daemon may decide based on recent software product usage, i.e., whether there has been a sufficient level of recent usage, to grant a temporary user license to run the software product. See col. 5, lines 56-62. This means that the software in Bains must have already been installed and run before the daemon is able to grant the temporary license. Therefore, *Bains* does not disclose generating, on a first computer, a first license for software installed on the first computer, wherein the first license is generated by the first computer

in response to the software being installed. Thus, *Bains* fails to cure the deficiencies of *Misra*.

In addition, it is not obvious to modify *Misra* to include *Bains*. Although an Office Action may suggest that an element of a primary prior art reference *could* be modified to form the claimed structure, 'the mere fact that the prior art *could* be so modified would not [make] the modification obvious unless the prior art suggested the desirability of the modification' (emphasis added). *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989) (citing *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)). There must be some supporting teaching in the prior art for the proposed modification to be proper. *In re Newell*, 891 F.2d 899, 13 USPQ2d 1248 (Fed. Cir. 1989). As described above, *Misra* discloses a software licensing system for licenses between a licensor and a licensee, while *Bains* states that its system does not apply to such licenses. Consequently, *Misra* and *Bains* do not teach or suggest combining their licensing systems, and in fact, *Bains* teaches away from modifying *Misra* to include *Bains*. Accordingly, one of ordinary skill in the art would not modify *Misra* to include *Bains*.

For at least the reasons set forth above, *Misra* in view of *Gradient* and *Bains* fails to teach or suggest all the limitations of claims 1 and 13. Therefore, claims 1 and 13 are not rendered obvious by *Misra* in view of *Gradient* and *Bains* for at least the reasons set forth above. Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 1 and 13 under 35 U.S.C. § 103.

Claims 2, 4-7, 9 and 10 depend from claim 1. Claims 25, 27-29 and 31-34 depend from claim 13. Because dependent claims include the limitations of the claims from

which they depend, Applicants submit that claims 2, 4-7, 9, 10, 25, 27-29 and 31-34 are not rendered obvious by *Misra* in view of *Gradient* and *Bains* for at least the reasons set forth above.

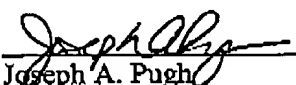
CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 1, 2, 4-7, 9, 10, 13, 25, 27-29 and 31-34 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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